IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**JUDGMENT**

Dilip Kumar & Anr. Versus State of Rajasthan.

S.B. Criminal Appeal No. 583/2004 against the judgment and order dated 5-6-2004 passed by the Additional Sessions Judge No.1, Chittorgarh , in Sessions Case No.1/2004.

...

Date of Judgment: May 05, 2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R. PANWAR**

Mr. R.K. Charan, for the appellants.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. N.S. Rathore and Mr. Jagdish Vyas, for the complainant.

**BY THE COURT:**

This criminal appeal under Section 374 (2) Cr.P.C. is directed against the judgment and order dated 5-6-2004 passed by the Additional Sessions Judge No.1, Chittorgarh (for short, "the trial Court" hereinafter) in Sessions Case No. 1/2004, whereby the trial Court convicted appellant No.1 Dilip Kumar for the offence under Section 498-A IPC and appellant No.2 Smt. Lali for the offences under Sections 498-A and 324 IPC; however, acquitted both the appellants of the offences under Section 307 and 406 IPC and Section 4 of the Dowry Prohibition

Act. Both the appellants were sentenced to three years rigorous imprisonment and a fine of Rs.2000/-, in default of payment of fine further to undergo two months simple imprisonment for the offence under Section 498-A IPC. Appellant No.2 Smt. Lali was also sentenced to two years simple imprisonment and a fine of Rs.2000/-, in default of payment of fine further to undergo two months simple imprisonment for the offence under Section 324 IPC. Aggrieved by the judgment and order impugned, the appellants have filed the instant criminal appeal.

I have heard learned counsel for the appellants and the Public Prosecutor as also the counsel appearing for the complainant.

Complainant PW 11 Smt. Meena W/o appellant No.1 Dilip Kumar appeared before this Court and filed an application for compounding the offences and stated that she has compromised the matter with her husband appellant No.1 Dilip Kumar and mother-in-law appellant No. 2 Smt. Lali. She has further stated that she has taken divorce by mutual consent before the Panchayat of the community and presently she is residing with her father Khayali Lal Soni, who is present in the Court. Khyali Lal Soni, the father of complainant Smt. Meena submitted before this Court that by a customary divorce, the parties have dissolved the marriage and now his daughter complainant Smt. Meena is residing with him.

Complainant Smt. Meena, in the Court, stated that she has no objection if the appellants are acquitted of the offences and set at liberty, as she has compromised the matter with them.

The offence under Section 324 IPC is compoundable with the leave of the Court. However, the offence under Section 498-A IPC is not compoundable. In B.S. Joshi & ors. Vs. State of Haryana & Anr., 2003 SCC (Cri.) 848, the Hon'ble Supreme Court held as under:-

> "The object of introducing Chapter XX-A in IPC was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. A hypertechnical view would be counterproductive and would act against the interest of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC."

In view of the decision of the Hon'ble Supreme Court in B.S. Joshi & ors. Vs. State of Haryana & Anr. (supra), complainant Smt. Meena is permitted to compound the offence under Section 324 IPC with the appellant No.2 Smt. Lali. However, I have examined the case on merit, so far as offence under Section 498-A IPC is concerned.

I have carefully gone through the statement of the complainant PW 11 Smt. Meena and other witnesses. The

allegation against the appellant No.2 Smt. Lali is that some poison was administered by her to complainant Smt. Meena by mixing it with the water. The trial Court has not relied on this part of the evidence. The other evidence against the appellant No. 2 is that she used to see the complainant with suspicious eyes. This part of the evidence cannot be said to be sufficient for construing the offence under Section 498-A IPC. So far as appellant No.1 Dilip Kumar is concerned, there is absolutely no evidence against him constituting the offence under Section 498A IPC. PW 11 in here whole of the statement has not stated anything against her husband appellant No.1 Dilip Kumar and, therefore, the prosecution has failed to prove the offence against both the appellants for the offence under Section 498-A IPC beyond reasonable doubt.

So far as offence under Section 324 IPC is concerned, it has been compounded by the complainant with the appellant No.2 Smt. Lali. Appellant No.1 Dilip Kumar has not been convicted for this offence under Section 324 IPC. In this view of the matter, the both the appellants deserve to be acquitted of the offences under Sections 498-A; and appellant No.2 Smt. Lali also deserves acquittal of the offence under Section 324 IPC on being compounded.

Consequently, the appeal is allowed. The judgment and order dated 5-6-2004 passed by the learned trial Court in

Sessions Case No. 1/2004 is set aside. The appellants are acquitted of the charges under Section 498-A and 324 IPC. The appellants are on bail. Their bail bonds stands discharged. The Criminal Misc. Application No. 190/2006 for compounding the offence stands disposed of.

(H.R. PANWAR), J.

mcs